

APPEAL NO. 011035
FILED JUNE 25, 2001

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on April 24, 2001, the hearing officer resolved the sole disputed issue by determining that the appellant (claimant) did not sustain a compensable injury to his lower back in addition to the injuries to his left shoulder, neck, and upper back on _____. The claimant appeals this determination on evidentiary sufficiency grounds and attaches certain medical records to his appeal, some of which were not offered below. The respondent (carrier) has filed a response noting the sparseness of the appeal, the new evidence attached to it, and urging the sufficiency of the evidence to support the hearing officer's determination.

DECISION

Affirmed.

The claimant attached certain documents to his appeal which were not in evidence below. They do not qualify to be considered for the first time on appeal. See Texas Workers' Compensation Commission Appeal No. 93536, decided August 12, 1993. The claimant testified that on _____, he was holding onto a mold weighing approximately 300 pounds with one hand when it slipped off the buggy and jerked him forward "pretty hard"; that he went to an emergency room (ER) with severe pain between his shoulders which he inferred masked his pain elsewhere; that his back pain at that time was "kind of insignificant"; that he was referred for physical therapy and returned to work; and that he commenced treating with Dr. D on January 24, 2000. He said that in May 2000 his back pain increased somewhat and that he mentioned this pain to Dr. D, who considered it to be a new injury even though he, the claimant, knew it was not. He conceded, however, that he told Dr. D he did not want to report his back as a new injury because he knew it was not a new injury and stated that Dr. D could have understood him to be complaining of a new low back injury. Dr. D's report of November 8, 2000, states that on May 11, 2000, the claimant informed him that his low back problem began approximately on May 9, 2000, while using his feet and legs to brace a heavy object and that the claimant expressed that he did not want to report this incident to the Texas Workers' Compensation Commission as a new injury.

The hearing officer did not find credible the claimant's contentions that the claimant's low back pain was present since _____, and reported to all the health care providers who then failed to mention this injury in their records. The hearing officer also makes clear that he found Dr. D's November 8, 2000, report credible. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)). We are satisfied that the challenged determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Michael B. McShane
Appeals Judge